

MMEA

MICHIGAN MUNICIPAL ELECTRIC ASSOCIATION

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The Honorable John D. Dingell

Ranking Member

U.S. House of Representatives

Committee on Commerce

Washington, DC 20515-6115

May 13, 1997

Dear Congressman Dingell:

Thank you for the opportunity to comment to you regarding electric utility restructuring. The Michigan Municipal Electric Association, representing 35 municipal utilities statewide, is always appreciative and willing to discuss these matters with you at your convenience. Below is the list of questions that you have requested we comment on, along with our responses.

1. **What are your biggest concerns about retail competition? If retail competition has been adopted by the state(s) you serve, or is under active consideration, what position have you taken and why?**
 - Preservation of local autonomy is an area of particular concern to us. Any initiative should preserve local control and oversight of public power systems.
 - Retail competition should be structured to ensure that all consumers, residential, small businesses and the like benefit from change.
 - A significant concern would be that retail competition was forced upon us through a federal mandate. States and local governments should be allowed to develop their own retail access system if they choose to do so. Congress should continue to respect the traditional authority states and localities have had over retail electricity transactions.
 - Any restructuring of the industry must include a series of protections against the establishment and abuse of market power, particularly for the protection of small business and residential consumers. A key element in mitigating market power is to retain the consumer protections in the Public Utility Holding Company Act (PUHCA). Protections are needed to help captive ratepayers from bearing the costs of failed attempts by holding companies to "diversify" into unrelated businesses and

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- preventing holding companies from shifting costs between their affiliates to gain an unfair competitive advantage and additional market power.
- Tax-exempt bonds used by public power systems carry with them restrictions on the amount of private use allowed for these facilities. Under retail competition, private use restrictions would severely limit the ability of a municipal utility to sell power it generated that become surplus because some of its customers switched to other suppliers. For full competition to occur, public power facilities existing as of a certain date should be exempted from the private use restrictions wherever retail competition has been established.
2. **Do you believe Congress should enact legislation mandating retail competition by a date certain and why or why not?**
- IOU's are ranking corporate welfare queens with \$245 billion dollars in deferred taxes.
 - No. State and local authorities are best able to determine whether or not retail access policies make sense economically and politically for their areas. They are the ones who best understand the economic characteristics, history, and trends in their jurisdictions and thus the impact that changes will have.
3. **Some privately owned utilities assert that public power enjoys a broad range of tax-related and other advantages which independently owned utilities (IOU) do not, and that these would unfairly benefit public power in a competitive retail marketplace. Do you agree? Do IOU's enjoy early benefits public power does not?**
- The IOUs who contend that public power will have an unfair advantage in a new market are really seeking to raise public power's rates to their own high levels.
 - Public power's lower rates are mainly due to two factors: 1) public power does not generate a profit, and 2) public power systems are operated more efficiently because of local oversight.
 - The "level-playing field" is actually tipped decidedly in favor of the private utilities who enjoy the advantages of size, political and financial superiority, market power, and freedom from requirements such as direct customer control, sunshine laws and open meeting and records requirements that both constrain and define public power utilities.

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Responses to specific tax-related allegations include:

- Public power systems pay substantial amounts of taxes and payments in lieu of taxes. According to a 1994 APPA study of the net payments and contributions for 670 public power systems, the median amount was 5.8% of electric operating revenues-- identical to the median net payment as percent of operating revenue for IOUs. The payments are property-like taxes, payments in lieu of taxes, and transfers to the general funds. The contributions take the form of free or reduced services to states and cities.
- IOUs do not pay large amounts of taxes. The customers of IOUs pay the taxes (including municipal electric systems that are wholesale customers of IOUs). Private utilities pass taxes through to the customers; they are tax collectors, not taxpayers.
- IOUs enjoy significant tax breaks. From 1954 to 1993, private utilities have benefitted from more than \$245 billion in subsidies, including accelerated depreciation, investment tax credits and deferred income taxes. In 1993 alone, these subsidies cost the federal treasury and U.S. taxpayers almost \$11 billion. Municipal electric systems are entitled to issue tax-exempt bonds because they are part of state and local governments, just as IOUs are eligible to enjoy certain tax benefits by nature of their being private corporations.

4. If Congress were to mandate retail competition, please provide any recommendations you have with respect to the following issues.

a. *Stranded investment:* How should IOUs stranded investment be treated? Does your company face anything similar and, if so, how should it be treated?

- Recovery at wholesale for the costs of assets rendered uneconomic by competition is unjustified and would impede the development of competitive bulk power markets. Those are contractual arrangements and the provisions of the contracts should prevail. Generally these contracts do not provide for payment of any costs beyond the term of the contract. At the retail level, however, recovery of such costs, including those incurred by the retail entity's wholesale supplier, may be appropriate if retail competition is established. The justification for this stems from the traditional obligation to acquire the resources necessary to serve every customers in the utility's service territory. Recovery of these retail stranded costs should be left to state and local authorities.

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- Private use restrictions on tax exempt bonds used to finance most generation, transmission and distribution facilities owned by public power systems would create a substantial "stranded investment for these utilities. These restrictions would severely limit the ability of a municipal utility to sell power it generated that became surplus because some of its customers switched to other suppliers.

b. *Reciprocity*: Should Congress consider provisions barring access to markets in states which have adopted retail competition by generators in states which have not? Which interests would this affect, and how?

- This is a matter of Constitutional law on which we have no opinion.

c. *Local distribution companies (LDC)*: Should Congress require unbundling of LDC services in order to subject them to competition?

- No. Ownership and control of the metering and billing functions should remain with the distributing utility. Historically, distributing utilities have been, and should continue to be, responsible for reading and maintaining the meters, as well as the billing functions associated with the meter. If ownership of the meter is separated from the distributing utility, there may be reliability and safety concerns.

Again, thank you for this opportunity. I would be pleased to discuss electric utility restructuring with you at your convenience or provide additional upon request.

Very Truly Yours,



Gary Zimmerman
Executive Vice President